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Supreme Court, U.S.
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No. 98-7809

In The

Supreme Court of the United States

SALVADOR MARTINEZ,

Petitioner,

v.

COURT OF APPEAL OF CALIFORNIA,

Respondent.

On Writ Of Certiorari To The Supreme Court Of The State Of California

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

When Lord Byron was a student at Cambridge, he circumvented a rule against keeping a dog in college rooms by keeping a bear instead, illustrating the pointlessness of a system of rules unprotected by a requirement that they be interpreted coherently and in the light of harmonizing principles. The humor in this anecdote is precisely that the rationalizing principle in play – namely, that for purposes of the university's rule, dogs and bears *are indeed both* members of the proscribed class of unwelcome pets – was obvious, yet wholly ignored.

Respondent attempts a similar Byronesque gambit in its brief – first by arguing that *Faretta v. California*, 422 U.S. 806 (1975), is irrelevant here because it is bad law or it offers no legal guidance for resolving the instant case; and second, by urging that there are dispositive differences between a trial and direct appeal which preclude classifying the two stages together for the limited purposes of the issue before the Court. Respondent's argument should meet the fate that would have fallen to Byron's bear, but for the university's forgiving sense of humor.

ARGUMENT

I. RESPONDENT HAS MISAPPREHENDED THE ROLE OF *FARETTA* IN PETITIONER'S ANALYSIS.

Respondent opens the substantive portion of its brief with five pages of argument as to why the Court's 1975 decision in *Faretta v. California* "was critically flawed and

should no longer be followed." Resp. Brief at 8-12. Attacking *Faretta* is tactically necessary, in Respondent's view, on the theory that "[t]he major premise of Petitioner's argument is that the decision in *Faretta* . . . has continuing validity and must be expanded to apply to every state appellate court system since there is no real difference between trials and first direct appeals." Resp. Brief at 8. Respondent further urges, apparently in the alternative, that "[e]ven if this Court declines to reexamine *Faretta* at this time, there is no legal basis for extending it to direct criminal appeals in state courts given the applicable law and the significant differences between a trial and a first appeal." *Ibid.*

If it is Respondent's position that Mr. Martinez's argument assumes, for the sake of the *structure* of his argument, that *Faretta* is a relevant precedent, that is correct but it is hardly controversial. In American constitutional jurisprudence, parties employ the Court's prior decisions in building constitutional arguments; that is the essence of the doctrine of *stare decisis*. The rationales of those decisions are taken seriously and their validity assumed as working hypotheses in argument-building, *not* because "the Court has spoken," but because it has spoken in a rationally defensible way employing a characteristic argument style. Indeed, this is the very compelling quality of the doctrine of *stare decisis*, and the principal reason the Court is reluctant to abandon its previous decisions except in the rare case.

The unique style of argument in constitutional adjudication reflects the central importance of earlier cases, which in turn have their own genealogy and relatedness to other cases and principles. The rationale for any new

case therefore takes a form in which the Court tries to knit precedents together in a coherent way, based on rationales and salient principles of earlier cases that are themselves logically intertwined. It is for this reason that evidence of the *absence* of this conceptual inter-relatedness of cases draws the indictment that a new decision is "cut from whole cloth," and the warning that "any departure from the doctrine of *stare decisis* demands special justification." *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984).

Thus, although the doctrine of *stare decisis* is not an "inexorable command," *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 405 (1932) (Brandeis, J., dissenting), the Court repeatedly has emphasized that a commitment to precedent is fundamental to "a society governed by the rule of law," *Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. 416, 420 (1983). *See generally, Patterson v. McLean Credit Union*, 491 U.S. 164, 172 (1989) ("[I]t is indisputable that *stare decisis* is a basic self-governing principle within the Judicial Branch, which is entrusted with the sensitive and difficult task of fashioning and preserving a jurisprudential system that is not based upon 'an arbitrary discretion.' THE FEDERALIST, No. 78, p. 490 (H. Lodge ed. 1888) (A. Hamilton)"); *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747, 786-87 (1986) (White, J., dissenting) (*stare decisis* "is essential if case-by-case judicial decision-making is to be reconciled with the principle of the rule of law, for when governing legal standards are open to revision in every case, deciding cases becomes a mere exercise of judicial will, with arbitrary and unpredictable results").

In the present case, *Faretta* is significant because it is a precedent of this Court which fits the pattern described

above. It is *not* that *Faretta* – *a fortiori* – dictates that a defendant has a constitutional right to self-representation on direct appeal. *Faretta*'s significance is rather that the Court's rationale in that case cannot be disconnected from the web of other cases making up the Court's jurisprudence in the assistance of counsel area, of which *Faretta* has become an integral element.

This means that the variety of analytical principles which gave texture and force to *Faretta* at its drafting – including the notion that the right to counsel cannot be separated analytically from the right to self-representation, *see Faretta*, 422 U.S. at 819-20; or that individual autonomy must figure in any analysis on this score, *ibid.* – cannot be ignored when we consider other cases in the class of similar procedural contexts. That would be like interpreting Cambridge's "no dogs allowed" rule to permit the keeping of a bear. If the underlying coherence of the Court's assistance of counsel cases is an attribute we insist on, that commitment carries the vital implication that later cases be judged by the same standard. For this reason, it is not surprising that the most compelling justification for *departing* from a precedent is that it has become a "detriment to coherence and consistency in the law," *Patterson v. McLean Credit Union*, 491 U.S. 164, 173 (1989).

Viewed in this light, it appears that Respondent has misapprehended the role that *Faretta* plays in Petitioner's argument. Our use of *Faretta* is not a "major premise" from which our conclusion apodictically follows, in the way Respondent imagines. Rather, the rationale of *Faretta* is relevant here because the threads of its logic connect, in a wholly coherent way, to other assistance of counsel

cases decided by the Court – the line of decisions specifying the procedural stages at which the Court has determined that a right to counsel is constitutionally required. Pet. Brief at 20-25.

The procedural upper bound of that line of decisions is direct appeal of right, the juncture of the present case. As the Court's analyses over the years have shown, the right to counsel is recognized in these cases because the liberty interests of the defendant are deemed to override competing interests of the State. Certain strands of the rationale of *Faretta* fold into Petitioner's argument to establish that there is a logical correlation between the right to counsel and the right to proceed *pro se*, and there is no reason for thinking this connection should be broken when the procedural posture of the case changes from the trial level to direct appeal. Therefore, the rejection of the right to self-representation on direct appeal can come only at the cost of compromising the analytical integrity of the Court's framework of decisions in the right to counsel area, which is not an acceptable state of affairs.

Because of the logical priority that coherence holds in constitutional adjudicating by the Court, we are at a loss to understand Respondent's charge that Petitioner's analysis "directly conflicts" with "how constitutional rights are determined." Resp. Brief at 13. Moreover, not only must new decisions connect to earlier ones in a non-arbitrary way, but as noted above, the Court's decision to overrule a prior case is most typically animated by a discovery that it has become a "*detriment* to [the] coherence and consistency," *Patterson v. McLean Credit Union*,

491 U.S. at 173 (emphasis added), necessary for the relevant body of precedents to remain intelligible. *Faretta*'s presence in that framework poses no such danger.

II. CLASSIFYING DIRECT APPEALS WITH TRIAL-LEVEL PROCEEDINGS IS REQUIRED BY THE COURT'S RELEVANT DECISIONS.

Respondent argues alternatively that, even if the Court "declines to reexamine *Faretta* at this time," there are "significant differences between a trial and a first appeal" that preclude Petitioner's argument. Resp. Brief at 8. It is true that there are differences between a trial and an appeal, just as there are differences between a dog and a bear. Indeed, virtually any case can be differentiated from a separate case if certain attributes are considered and others ignored.

Respondent's analytical problem, however, is that the Court *already* has delimited the range of procedural contexts in which a defendant's right to counsel, if exercised, must be honored. As discussed in detail in Petitioner's Brief, that class of fact patterns includes first appeals of right. *See* Pet. Brief at 14-20. It is thus clear that, where the legal question involves the right to counsel *vel non*, direct appeals are deemed a part of the same class as trial proceedings. It follows that if the right to counsel and the right to dispense with counsel are logically correlative – a point Respondent does not contest – the right to elect self-representation on direct appeal must be countenanced. This is not, as Respondent suggests, an errant perspective of the constitutional right Petitioner asserts in this case. To the contrary, it is a candid acknowledgment of the logical implications of the Court's controlling decisions.

Accordingly, the second half of Respondent's Brief, which rates the interests of defendants against the State's interests in ensuring the correctness of its judgments and reducing administrative burdens, Resp. Brief at 19-30, cannot genuinely advance Respondent's position. Respondent's contentions on this score are characteristic of the claims nearly always pressed by States in defense of their own rules and procedures, and we do not question the social value of the interests Respondent urges. But the Court's holdings are unified by the principle that a defendant's due process interests are of a fundamental magnitude at least through the series of procedural stages bounded by first appeal of right. For cases that fall within that well-defined set, the interests of the State are secondary to those of the defendant, and thus cannot be overridden either by the State's own view of the requirements of fairness or its utilitarian concerns. *See* Pet.'s Brief at 16-20.

CONCLUSION

For these reasons, Respondent's arguments are not availing. The lower court's decision should be reversed.

Respectfully submitted,

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